

STATES' LEGISLATIVE EFFORTS TO ASSIST CHILDREN FOUND IN OR NEAR METHAMPHETAMINE LABORATORIES¹

The National Alliance for Model State Drug Laws' (NAMSDL) ongoing review of specific state legislative language intended to assist children found in or near methamphetamine laboratories indicates that states are adopting three general categories of statutory provisions:

FIRST CATEGORY:

Increases penalties for performing certain prohibited activities on the same premises where a child is located or in the presence of a child or other member of a protected class

1) Prohibited activities include:

- Manufacturing methamphetamine or controlled substances,
- Attempting to manufacture methamphetamine or controlled substances,
- Storing chemicals or waste, by-products of methamphetamine production,
- Possessing chemicals, methamphetamine or controlled substances,
- Causing or permitting a child to be exposed to, inhale, ingest, or otherwise come in contact with methamphetamine, chemicals or controlled substances.

2) Member of the protected class sometimes includes the elderly and/or vulnerable/dependent adults (e.g. adults with mental or physical disabilities).

3) Age of the “child” who is protected can vary among states, but the recent trend is to include those less than 18 years of age in the protected class.

4) States are increasing the number of locations where the conduct of prohibited activities in the presence of or on the same premises as a child subjects the offender to increased penalties. The expansion of the locations is often accomplished through broadening the definition of “premises” or “in the presence of”. The locations where increased penalties are applicable can include:

- In the physical presence of the child.
- The residence of a child
- A location where a child can reasonably be expected to be (e.g. park, playground)
- A hotel room or other room offered for overnight accommodation
- Multi-unit residential dwelling, apartment unit, rented room
- Building
- Structure
- Dwelling house
- Conveyance
- Motor vehicle or vessel

¹ This update does not contain legislation addressing the child endangerment issue as it pertains to: (a) pregnant and addicted mothers/prenatal exposure to alcohol and/or controlled substances, (b) manufacturing controlled substances in or near “drugfree zones” such as places of worship, playgrounds, schools, day care facilities, etc., (c) driving under the influence of alcohol or controlled substances with a child present in a vehicle, (d) failing to place a child in a child safety seat/failing to employ the use of a seat belt or (e) providing alcohol or tobacco products to minors. Although the National Alliance for Model State Drug laws (NAMSDL) recognizes that such acts endanger children, we consider the aforementioned offenses as separate research issues out of the customary purview of child endangerment laws enacted to address the urgency fueled by the existence of clandestine laboratories, especially those used to manufacture methamphetamine.

- Propelled vehicle or structure adopted for overnight accommodations of persons or for carrying on business
 - Offices
- 5) The penalties are graduated depending on the severity of the injury or the death of the child or other protected class member

SECOND CATEGORY:

Increases penalties for performing certain prohibited activities on the same premises where a child is located or in the presence of a child or other member of a protected class

AND

Defines prohibited activity as child endangerment, neglect, or abuse

The intent is to facilitate the child's access to services which state and local authorities traditionally provide to children identified as endangered, neglected or abused.

THIRD CATEGORY:

Emergency or exigent circumstances

These provisions allow a first responder, generally a law enforcement officer, to immediately take a child from a methamphetamine laboratory location to child protective services or other appropriate officials without first obtaining a court order.